

### **REMARKS**

The Examiner states that the information disclosure statement (IDS) filed July 21, 2004 does not comply with 37 CFR §1.98(a) without pointing to specific problems with the IDS other than to state Applicant has not included an English translation for the foreign patent documents. First, Applicants have never been required to submit English translations of foreign patent documents, for example, see 37 CFR §1.98(a)(3)(ii). Moreover, MPEP states that Applicant meets the requirements of 37 CFR §1.98(a) when the "information listed is not in the English language, **but was cited in a search report.**" MPEP §609.04(a) III. (8<sup>th</sup> ed., rev. no. 3, vol. 1). The IDS listed foreign patents cited in an international search report which was filed at the time of entering the national stage in the U.S. Accordingly, Applicant has complied with 37 CFR §1.98(a). Consequently, the Examiner must consider the IDS filed July 21, 2004 and documents provided therewith, including initialing the appropriately presented Form PTO-1449.

The Examiner objects to the disclosure due to informalities. The disclosure is amended as suggested by the Examiner, and therefore, this objection is rendered moot.

The issue regarding incorporating by reference a Japanese Application is moot because claim 6 is withdrawn.

The Examiner objects to claim 4 due to an informality. The claim is amended as suggested by the Examiner, and therefore, this objection is rendered moot.

Claims 1 and 4 are rejected under 35 U.S.C. §102(b) as being anticipated by Leonard et al. (U.S. Patent No. 6,063,044). Claim 2 is rejected under 35 U.S.C. §103(a) as being unpatentable over Leonard et, al. as applied to claim 1 above in view of Arhan, et al. (U.S. Patent No. 4,566,465). Claim 3 is rejected under 35 U.S.C. §103(a) as being

unpatentable over Leonard and Arhan in view of Frei et al. (U.S. Patent No. 4,250,894).

Regarding the anticipation rejection against independent claim 1 based on Leonard, claim 1 recites a stress detection sensor provided on said probe. Leonard teaches a strain gauge 58 in direct contact with housing member 42 and secured to housing member 60 (col. 5, lns. 51-54), but not provided on said **probe** as positively recited. In fact, the Examiner relies on Leonard's teaching to housing member 29 to allege a teaching to the positively recited probe (pg. 4 of paper no. 09142005). However, housing member 29 is located at one end of measuring device 20 and the strain gauge 58 is located at the opposite end of measuring device 20. Accordingly, Leonard fails to teach or suggest a stress detection sensor provided on said probe as positively recited by claim 1. Claim 1 is allowable.

Furthermore, claim 1 recites a *resilient* arm member having one end and the other end. Leonard teaches an end cap 68 for which the Examiner relies to allegedly teach the positively recited resilient arm member (pg. 4 of paper no. 09142005). However, there is no teaching or suggestion that the end cap 68 of Leonard is resilient, and notably, the Examiner points to no such teachings. Accordingly, Leonard fails to teach or suggest a resilient arm member as positively recited in claim 1. Claim 1 is allowable.

Moreover, claim 1 recites the resilient arm member having one end and the other end, said one end supporting said at least one probe thereon. The Examiner relies on the end cap 68 of Leonard to allegedly teach the positively recited resilient arm member and relies on lower housing member 29 of Leonard to allegedly teach the positively recited one probe (pg. 4 of paper no. 09142005). However, the end cap 68 of Leonard contacts only the housing member 60 (Figs. 1-3) and has no interaction or cooperation with the

lower housing member 29 of Leonard (for which the Examiner alleges teaches the one probe recited by claim 1). That is, it is inconceivable that the end cap 68 of Leonard has *one end supporting said at least one probe* as positively recited by claim 1. Claim 1 is allowable.

Claims 2-4 and 8-18 depend from independent claim 1, and therefore, are allowable for the reasons discussed above with respect to the independent claim as well as for their positively recited limitations which are not taught or suggested by the art of record.

For example, regarding the obviousness rejection against claim 2 based on the combination of Leonard and Arhan, claim 2 recites said resilient arm member comprises a plurality of **spring members**. The Examiner correctly states that Leonard fails to teach this limitation and therefore relies on Arhan to allegedly teach this limitation. However, the Examiner relies on teachings of two arms 5 and 6 of Arhan to allege the teaching of the positively recited spring members (pg. 5 of paper no. 09142005). There is no teaching or suggestion that the two arms 5, 6 act as spring members, and notably, the Examiner points to no such teachings. Claim 2 is allowable.

Moreover, regarding the obviousness rejection against claim 3 based on the combination of Leonard and Arhan and Frei, claim 3 recites said light emitting element being **secured on a surface of said probe base**. The Examiner fails to address this limitation in the pending Action. Additionally, the art of record fails to teach or suggest, singularly or in any combination, this positively recited limitation. Therefore, claim 3 is allowable.

Additionally, regarding the obviousness rejection against claim 3 based on the combination of Leonard and Arhan and Frei, claim 3 recites said light receiving element


being **secured on said spring member** so as to oppose to each other. The Examiner fails to address this limitation in the pending Action. Additionally, the art of record fails to teach or suggest, singularly or in any combination, this positively recited limitation. Therefore, claim 3 is allowable.

If the Examiner maintains the rejection against claim 3, or for the first time provides a proper rejection against claim 3, Applicant respectfully requests that the Examiner provide a **non-final office** action to provide Applicant the first opportunity to respond to a proper rejection against claim 3. Without a subsequent non-final action, Applicant is denied an opportunity during prosecution to properly rebut a proper rejection against claim 3. According to 37 CFR §1.104(d)(2), Applicant should have the opportunity to contradict or explain such prior art. Moreover, a subsequent non-final Office Action is appropriate to provide the opportunity for the **Applicant to have a full and fair hearing** regarding the claimed subject matter as is Applicant's right. MPEP §706.07 (8<sup>th</sup> ed., rev. 3, vol. 1). A "clear issue between applicant and examiner should be developed, if possible, before appeal." MPEP §706.07 (8<sup>th</sup> ed., rev. 3, vol. 1). Accordingly, if the Examiner maintains the rejection against independent claim 3, or for the first time provides a proper rejection against claim 3, the issuance of a new **non-final** Office Action is appropriate and warranted to develop a clear issue to determine appropriate subsequent action in the prosecution of this case.

This application is now believed to be in immediate condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview prior to the issuance of any such subsequent action.

Respectfully submitted,

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